Supreme Court, U.S.
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No. 94-2068

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ELIZABETH PARKERSON,

Petitioner,

v.

STACY ELIZABETH BROOKS AND WILLIAM DAVID BROOKS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

When fit and married parents make a joint decision to deny visitation between their child and a third party, may the state interfere with these fundamental rights of the parents, without any showing of harm, and force the parents to surrender their child for visitation solely because the third party is a grandparent?

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TO THE HONORABLE SUPREME COURT:

The Respondents, Stacy Elizabeth Brooks and William David Brooks, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by the Petitioner, Elizabeth Parkerson.

STATEMENT OF THE CASE

Respondents are married and the natural parents of a daughter born, January 2, 1991. Petitioner is the maternal grandmother.

Respondent Stacy Brooks has had ongoing conflict with her mother, Petitioner herein, since she was at least 14 years old.

Mrs. Brooks' parents divorced in 1980. When Mrs. Brooks reached the age of 14, she elected to live with her father who subsequently filed a change of custody petition. The father was awarded custody of both minor children, ages 14 and 9.

Mrs. Parkerson appealed the decision of the trial court, even though she had not contested, nor produced any evidence of unfitness of the father. The decision of the trial court was affirmed. *Parkerson v. Parkerson,* 167 Ga. App. 265 (306 S.E. 2d 97) (1983).

After the birth of their child, Respondents had allowed Petitioner casual and intermittent contact with the grandchild. When conflicts persisted concerning the child, Respondents jointly decided to prevent further contact between their child and Petitioner.

Petitioner filed an original action seeking court ordered visitation with the minor child pursuant to O.C.G.A. §19-7-3 (Georgia Grandparent Visitation Statute). The answer of the Respondents admitted the

jurisdictional allegations and that they are the parents of the minor child. The Respondents otherwise denied all other allegations of the Petitioner. Petitioner is simply wrong when she alleges that the facts in the record are as stated in the initial petition for visitation rights. (Petition for Writ of Certiorari p.8).

Respondents contended that O.C.G.A. §19-7-3 was both facially unconstitutional and unconstitutional as applied, in violation of the Georgia Constitution and the Constitution of the United States. The trial court overruled the constitutional challenges and denied Respondents' motion to dismiss.

A certificate of immediate review issued and the Supreme Court of Georgia granted Respondents' application for discretionary appeal.

The Georgia Supreme Court agreed with the Respondents. Chief Justice Hunt wrote: "We hold that the statute [O.C.G.A. §19-7-3] is unconstitutional under both our state and federal constitutions, and reverse the trial court's order to the contrary." *Brooks v. Parkerson*, 265 Ga. 189, (454 S.E.2d 769, 770) (1995).

SUMMARY OF THE ARGUMENT

The Georgia Supreme Court analyzed the constitutionality of O.C.G.A. §19-7-3 utilizing two separate lines of inquiry, the state and federal constitutions. The Georgia court found both the state and federal constitutions, separately and independently, in agreement. Accordingly, this Honorable Court lacks jurisdiction under 28 U.S.C. §1257 as the Georgia decision is based on adequate and independent state grounds.

The Court below was correct in finding that the constitutionally protected fundamental rights of parents to raise their children could not be infringed by the state without a showing of harm. Further, the Georgia court was not required to edit the constitutionally infirm statute rather than declare it unconstitutional.

REASONS FOR DENYING THE WRIT

I.

THIS HONORABLE COURT LACKS JURISDICTION UNDER 28 U.S.C. §1257 AS THE DECISION OF THE GEORGIA SUPREME COURT IS BASED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

The Georgia Supreme Court carefully analyzed the provisions of O.C.G.A. §19-7-3 under the state and federal constitutions. The decision below was not primarily founded on federal law. Rather, the Georgia court found that after independent and separate reviews under both the state and federal constitutions, the same answer was reached. There is not a hint that the decision reached on state constitutional grounds would be affected by any different interpretation of the federal constitution.

It is axiomatic that the state courts shall be allowed to interpret their own constitutions, *Minnesota v. National Tea Co.*, 309 U.S. 551, 60 S.Ct. 676, 84 L.Ed. 920 (1940), and in doing so, are free to provide greater individual rights than may be protected under similar provisions of the federal constitution, *Arizona v. Evans*, 514 U.S. ____, 115 S.Ct. 1185, 131 L.Ed. 2d 34 (1995).

The Georgia Supreme Court surveyed the protected interests of the parents through decisions of

this Court, and then through decisions of the Georgia courts, finding: "Parents have comparable interests under our state constitutional protections of liberty and privacy rights ". 265 Ga. at 192, 454 S.E. 2d at 772. The Georgia court then surveyed the extent of permissible state infringement on the fundamental rights of parents through decisions of this Court, and then through decisions of the Georgia courts, finding:

> Likewise, following the analysis of the Tennessee Supreme Court in interpreting its state statutes and constitutions, we find that implicit in Georgia cases, statutory and constitutional law is that state interference with parental rights to custody and control of children is permissible only where the health or welfare of a child is threatened. *Id.* 265 Ga. at 193, 454 S.E. 2d at 773.

Finally, the Georgia court expressly reversed the trial court on state constitutional grounds, independently from federal constitutional violations.

> The statute in question is unconstitutional under both the state and federal constitutions because it does not clearly promote the health or welfare of the child and does not require a showing of harm before state interference is authorized. *Id.* 265 Ga. at 194, 454 S.E. 2d at 774.

The Georgia court clearly reached identical, independent conclusions in analyzing the state and federal constitutions. The references to federal law did not themselves compel the result reached by the Georgia court. Accordingly, this Honorable Court lacks jurisdiction as the decision sub judice is based on adequate and independent state grounds.

> If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision. *Michigan v. Long*, 463 U.S. 1032, 1041, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983).

II.

THE GEORGIA SUPREME COURT CORRECTLY DETERMINED THAT THE STATE MAY NOT INTERFERE WITH THE FUNDAMENTAL CHILD-REARING DECISIONS OF PARENTS ABSENT A THRESHOLD SHOWING OF HARM TO THE CHILD.

Long before there were courts or codification of law, parents have had the exclusive responsibility and right to make the day to day decisions concerning their offspring. The rights of parents to rear their children as the parents deem best are intrinsic, inherent and firmly rooted in history and nature.

The parental autonomy of the family unit eventually gives way when the offspring reaches majority age or emancipation. At such time the parent has no longer the authority or right to compel the adult child to behave as directed by the parent. If the adult child chose to never visit the parent, there has been, nor is there to this date, any legal mechanism to compel such visitation. Although there may be many beneficial reasons to encourage or promote such visitations, the parent of an adult child simply cannot make their own child visit with them. Since the parent of an adult child cannot make their own child visit with them, there certainly is no authority to compel visitation between the parents and someone else's child; the grandchild. There is no basis in natural law, or history, for this generation skipping "right" of grandparent visitation.

Under the common law there was no recognized right of a grandparent to force visitation with a grandchild when the child's parents prohibited such contact. These heretofore non existent "rights" of grandparents are merely a rather recent invention of the various state legislatures.

In the case at bar, the Respondents exercised their fundamental and constitutionally protected rights as parents to deny visitation of their child with a third party, Petitioner, a grandparent. This decision, like the host of decisions made every day by parents, may be second guessed as to whether it is the wisest or most prudent, or best. However, it is the parents

responsibility, duty and exclusive right to make such decisions. The Georgia Supreme Court correctly determined that the state simply has no constitutionally sufficient or compelling justification to interfere with the fundamental rights of the parents to custody and control without a showing of harm to the child, 265 Ga. at 194, 454 S.E. 2d at 774.

The Petitioner apparently agrees with the Georgia Supreme Court concerning the issues in the case, since the request to this Court is that the Georgia decision be reversed in part. (Petition for Writ of Certiorari pp. 12, 13, 14, 15, 24).

Petitioner's sole objection to the Georgia decision is that "the Court overreacted in striking down the statute [O.C.G.A §19-7-3] in *all* situations." (Emphasis supplied, Petition for Writ of Certiorari pp. 10-11). The Petitioner then proposes four circumstances, none of which are applicable to the case at bar, that she contends do not contravene the fundamental rights of parents. (Petition for Writ of Certiorari p.11). Although Petitioner admits that "it is not the function of this Court to review the state court's construction of the Act" (Petition for Writ of Certiorari n.7 at p.11)., that is precisely what she seeks. Petitioner desires that this

Court compel the Georgia Supreme Court to accept the trial court's construction of O.C.G.A. §19-7-3:

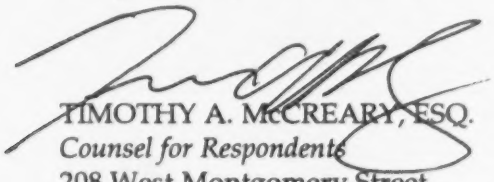
> Nor did the [Georgia Supreme] court explain at all its failure or refusal to adopt the narrowing construction proposed by the trial court . . . (Petition for Writ of Certiorari p.8).
>
> In fact, the Georgia Supreme Court's construction of the Act [O.C.G.A. §19-7-3] is not correct. As the trial court recognized, the language of the Act . . . compel, or at least allow, a construction requiring just the procedural protections insisted upon by the Georgia Supreme Court. (Petition for Writ of Certiorari n.7 pp. 10-11).

It is certainly not error for the Georgia Supreme Court to reject the trial court's construction of this state statute. Petitioner has cited no authority that would require the Georgia Supreme Court to re-write the statute in question rather than declare it unconstitutional. In our ordered concept of liberty, with a government of checks and balances, it is the prerogative of the legislature to enact statutes.

CONCLUSION

For all of the foregoing reasons, Respondents pray that this Honorable Court deny the request for Writ of Certiorari as this case presents no issue appropriate for the Court's review, and because the decision of the Georgia Supreme Court was not in error.

Respectfully submitted,



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